

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 BANK OF AMERICA, N.A.,

5 Plaintiff,

6 v.

7 SFR INVESTMENTS POOL 1, LLC and  
8 MANCHESTER PARK HOMEOWNERS  
ASSOCIATION,

9 Defendants.

10 AND ALL RELATED CLAIMS.  
11

Case No. 2:15-cv-01771-APG-VCF

**ORDER GRANTING DEFENDANT  
MANCHESTER PARK  
HOMEOWNERS ASSOCIATION'S  
MOTION TO DISMISS**

(ECF No. 12)

12 This is a dispute over property located at 10828 Mystic Shore Avenue in Las Vegas.  
13 Plaintiff Bank of America, N.A. held a senior deed of trust encumbering the property and intends  
14 to foreclose because the former owner has stopped making mortgage payments. However,  
15 defendant Manchester Park Homeowners Association previously foreclosed on a homeowners  
16 association ("HOA") lien after the property owner did not pay his HOA assessments. Defendant  
17 SFR Investments Pool 1, LLC purchased the property at the HOA foreclosure sale. Bank of  
18 America seeks to quiet title to the property, contending that the HOA foreclosure sale did not  
19 extinguish its deed of trust.

20 Bank of America's complaint asserts a claim to quiet title against SFR, a claim for breach  
21 of a duty of good faith imposed by Nevada Revised Statutes ("NRS") § 116.1113 against  
22 Manchester Park, and a claim for wrongful foreclosure against Manchester Park. Manchester  
23 Park moves to dismiss Bank of America's two claims against it, arguing that those claims must  
24 first be mediated under Nevada Revised Statutes § 38.310.<sup>1</sup> Bank of America responds that  
25 § 38.310 is a state statute that does not affect this court's jurisdiction. Additionally, Bank of

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27 <sup>1</sup> Manchester Park also argues Bank of America has failed to include a necessary party, the  
28 original borrower, Ryan Torrisi. Torrisi since has been added to this action (ECF No. 19), so this  
argument is moot.

1 America argues that the section applies only to homeowners bringing suit against their  
2 associations, and does not apply to beneficiaries of deeds of trust. Finally, Bank of America  
3 argues § 38.310 does not apply because Bank of America's claims do not rely on an interpretation  
4 of the any conditions, covenants, or restrictions adopted by Manchester Park. Rather, Bank of  
5 America contends, its claims depend on an interpretation of the HOA foreclosure statutes.

6 Bank of America's claims must be dismissed because they were not first submitted to  
7 mediation as required under § 38.310. *See U.S. Bank, N.A. v. Woodchase Condo. Homeowners*  
8 *Ass'n*, No. 2:15-cv-01153-APG-GWF, 2016 WL 1734085, at \*2-3 (D. Nev. May 2, 2016);  
9 *Nationstar Mortgage, LLC v. Sundance Homeowners Ass'n, Inc.*, No. 2:15-cv-01310-APG-GWF,  
10 2016 WL 1259391, at \*3 (D. Nev. Mar. 30, 2016); *see also Nationstar Mortgage, LLC v. Springs*  
11 *at Spanish Trail Ass'n*, No. 2:15-cv-01217-JAD-GWF, 2016 WL 1298106, at \*3-4 (D. Nev. Mar.  
12 31, 2016). The Supreme Court of Nevada has determined that claims under § 116.1113 are "civil  
13 actions" within § 38.310's scope because such claims "require[ ] the district court to interpret  
14 regulations and statutes that contain[ ] conditions and restrictions applicable to residential  
15 property." *McKnight Family, L.L.P.*, 310 P.3d 558. I therefore dismiss Bank of America's bad  
16 faith claim pursuant to § 38.310.

17 Additionally, Bank of America's wrongful foreclosure claim must be dismissed because  
18 Bank of America alleges that the foreclosure was wrongful because (1) Manchester Park failed to  
19 give proper notice or opportunity to cure, (2) the HOA sale was commercially unreasonable, and  
20 (3) Manchester Park failed to comply with Chapter 116. Each of these allegations challenges the  
21 HOA's enforcement of its lien through Chapter 116. As *McKnight* held, "[w]rongful foreclosure  
22 is a civil action subject to NRS 38.310's requirements because deciding a wrongful foreclosure  
23 claim against a homeowners' association involves interpreting covenants, conditions, or  
24 restrictions applicable to residential property." 310 P.3d at 559. Accordingly, I dismiss Bank of  
25 America's wrongful foreclosure claim under § 38.310.

26 IT IS THEREFORE ORDERED that defendant Manchester Park Homeowners  
27 Association's motion to dismiss (**ECF No. 12**) is **GRANTED**. Plaintiff Bank of America, N.A.'s  
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1 claims against defendant Manchester Park Homeowners Association are DISMISSED without  
2 prejudice for failure to first mediate them as required by NRS § 38.310.

3 DATED this 12<sup>th</sup> day of July, 2016.

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6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
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